

Sep. 27. 2012 3:58PM

THE BIRDS BIRDSONG MILLS & MCBRIDE

No. 6333 P. 3/22

FILED

SEP 27 2012

IN THE CIRCUIT COURT OF PHELPS COUNTY, MISSOURI

SUE BROWN, CIRCUIT CLERK  
PHELPS COUNTY, MO.

Christiane Dalton,  
Individually and on behalf of all others similarly situated,

Plaintiff,

vs.

Target Corporation,

Defendant.

Case No. 12PH-CN00559

ANSWER OF DEFENDANT TARGET CORPORATION

Defendant Target Corporation ("Defendant") answers the Petition of plaintiff Christiane Dalton ("Plaintiff") as follows:

PLAINTIFFS' AVERMENTS AND CLAIMS

Answer to Averments Under "Preliminary Statement"

1. Defendant denies liability under any of Plaintiff's stated theories. In any event, Defendant lacks knowledge or information sufficient to form a belief as to Plaintiff's motives in filing this action, and on that basis denies each and every averment contained in this paragraph.
2. Defendant denies all averments in this paragraph regarding Defendant's alleged actions, including that it that "deploys this code to profit from harvesting private information from and about such persons, across their web-browsing activity, even when they specifically set their privacy controls to prevent tracking." Defendant lacks knowledge or information sufficient to form a belief as to the remaining allegations made in this paragraph—particularly regarding the capabilities of Plaintiff's and unnamed Class Members' computers—and on that basis denies each and every averment contained therein.
3. Defendant avers that the allegations of this paragraph contain argument and legal conclusions that require no answer. Defendant denies each and every factual allegation contained in this paragraph.
4. Defendant lacks knowledge or information sufficient to form a belief as to the allegations made in this paragraph, and on that basis denies each and every averment contained therein.
5. Defendant avers that the allegations of this paragraph contain argument and legal conclusions that require no answer. Defendant denies each and every factual allegation contained in this paragraph.

Answer to Averments Under "Jurisdiction"

6. Defendant lacks knowledge or information sufficient to form a belief as to the remaining allegations made in this paragraph, and on that basis denies each and every averment contained therein.

7. Defendant lacks knowledge or information sufficient to form a belief as to the remaining allegations made in this paragraph, and on that basis denies each and every averment contained therein.

8. Defendant lacks knowledge or information sufficient to form a belief as to the remaining allegations made in this paragraph, and on that basis denies each and every averment contained therein.

9. Defendant lacks knowledge or information sufficient to form a belief as to the remaining allegations made in this paragraph, and on that basis denies each and every averment contained therein.

Answer to Averments Under "Parties"

10. Defendant lacks knowledge or information sufficient to form a belief as to the allegations of this paragraph, and on that basis denies each and every averment contained therein.

11. Defendant admits and avers that Target Corporation is incorporated in the State of Minnesota and headquartered in the State of Minnesota. Defendant further admits and avers that Target Corporation operates brick-and-mortar retail stores, and operates a retail website, [www.target.com](http://www.target.com). Defendant further admits and avers that Target Corporation's registered agent for service of process is currently, CT Corporation System, 120 South Central Avenue, Clayton, Missouri 63105. Unless expressly admitted, Defendant denies each and every factual allegation contained in this paragraph.

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Answer to Averments Under "Allegations of Fact"

12. Defendant admits and avers that Target Corporation sells retail products online. Unless expressly admitted, Defendant denies each and every factual allegation contained in this paragraph.

13. Defendant admits and avers that Target Corporation operates a website. Unless expressly admitted, Defendant denies each and every factual allegation contained in this paragraph.

14. Defendant denies each and every factual allegation contained in this paragraph.

15. Defendant denies each and every factual allegation contained in this paragraph.

16. Defendant lacks knowledge or information sufficient to form a belief as to the allegations made in this paragraph regarding unnamed "third parties," and on that basis denies each and every factual allegation made about them. Defendant denies each and every remaining factual allegation contained in this paragraph.

17. Defendant denies each and every factual allegation contained in this paragraph.

18. Defendant denies each and every factual allegation contained in this paragraph.

Answer to Averments Under "Target's Deposit of Tracking Cookies on Plaintiff's and Class Members' Computers"

19. Defendant denies each and every factual allegation contained in this paragraph.

20. Defendant denies each and every factual allegation contained in this paragraph.

21. Defendant denies each and every factual allegation contained in this paragraph.

22. Defendant denies each and every factual allegation contained in this paragraph.

23. Defendant lacks knowledge or information sufficient to form a belief as to the allegations made in this paragraph—all of which concern the actions of unnamed "third parties"—on that basis denies each and every factual allegation made about them.

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24. Defendant denies each and every factual allegation contained in this paragraph.

25. Defendant lacks knowledge or information sufficient to form a belief as to the allegations made in this paragraph—all of which concern the actions of unnamed “third parties”—on that basis denies each and every factual allegation made about them.

26. Defendant denies each and every factual allegation contained in this paragraph.

27. Defendant lacks knowledge or information sufficient to form a belief as to the allegations made in this paragraph about Plaintiff’s and unnamed Class Members’ web browsers, on that basis denies each and every factual allegation made about them. Defendant denies each and every remaining factual allegation contained in this paragraph

Answer to Averments Under “Target’s Deposit of Tracking Cookies on Plaintiff’s and Class Members’ Computers”

28. Defendant denies each and every factual allegation contained in this paragraph.

29. Defendant lacks knowledge or information sufficient to form a belief as to the allegations made in this paragraph—which concern (1) speculation about what the third party inventors of “LSO files” had “designed” and intended for such files and (2) what other individuals may “rhetorically” call such files—and on that basis denies each and every averment contained therein.

30. Defendant lacks knowledge or information sufficient to form a belief as to the allegations made in this paragraph—concerning what Plaintiff and Class Members allegedly know about “LSO files”—on that basis denies each and every factual allegation made about them.

31. Defendant lacks knowledge or information sufficient to form a belief as to the consequences of Plaintiffs’ and Class Members’ “self-help” (which is vague and undefined in any event), and on that basis denies each and every averment contained therein.

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32. Defendant denies each and every factual allegation contained in this paragraph.

33. Defendant avers that the allegations of this paragraph contain argument and legal conclusions that require no answer. Defendant denies each and every factual allegation contained in this paragraph.

34. Defendant lacks knowledge or information sufficient to form a belief as to the allegations made in this paragraph—concerning third-party “exchanges” of information—and on that basis denies each and every averment contained therein.

35. Defendant denies each and every factual allegation contained in this paragraph.

36. Defendant denies each and every factual allegation contained in this paragraph.

37. Defendant admits and avers that it does not “share . . . revenue” with Plaintiff and unspecified Class Members. Unless expressly admitted, Defendant denies each and every factual allegation contained in this paragraph.

38. Defendant avers that the allegations of this paragraph contain argument and legal conclusions that require no answer. Defendant denies each and every factual allegation contained in this paragraph.

Answer to Averments Under “Damages Resulting from Target’s Conduct”

39. Defendant denies each and every allegation contained in this paragraph.

40. Defendant denies each and every factual allegation contained in this paragraph.

41. Defendant denies each and every factual allegation contained in this paragraph.

42. Defendant denies each and every factual allegation contained in this paragraph.

43. Defendant denies each and every factual allegation contained in this paragraph.

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Answer to Averments Under "Class Allegations"

44. Defendant admits and avers that Plaintiff brings this action as a class action, and that Plaintiff purports to do so on behalf of the class persons defined in this paragraph. Unless expressly admitted, Defendant denies each and every factual allegation contained in this paragraph.

45. Defendant admits and avers that Plaintiff purports to limit the scope of the defined class as defined in this paragraph. Defendant avers, however, that the scope of the class is a legal conclusion that requires no answer, not a factual allegation. Unless expressly admitted, Defendant denies each and every factual allegation contained in this paragraph.

46. Defendant lacks knowledge or information sufficient to form a belief as to the allegations made in this paragraph, and on that basis denies each and every averment contained therein.

47. Defendant avers that the allegations of this paragraph contain argument and legal conclusions that require no answer. Defendant denies each and every factual allegation contained in this paragraph.

48. Defendant avers that the allegations of this paragraph contain argument and legal conclusions that require no answer. Defendant denies each and every factual allegation contained in this paragraph.

49. Defendant avers that the allegations of this paragraph contain argument and legal conclusions that require no answer. Defendant denies each and every factual allegation contained in this paragraph.



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50. Defendant avers that the allegations of this paragraph contain argument and legal conclusions that require no answer. Defendant denies each and every factual allegation contained in this paragraph.

51. Defendant avers that the allegations of this paragraph contain argument and legal conclusions that require no answer. Defendant denies each and every factual allegation contained in this paragraph.

52. Defendant avers that the allegations of this paragraph contain argument and legal conclusions that require no answer. Defendant denies each and every factual allegation contained in this paragraph.

53. Defendant avers that the allegations of this paragraph contain argument and legal conclusions that require no answer. Defendant denies each and every factual allegation contained in this paragraph.

54. Defendant avers that the allegations of this paragraph contain argument and legal conclusions that require no answer. Defendant denies each and every factual allegation contained in this paragraph.

Answer to Averments Under "Count I: Computer Tampering in Violation of Missouri Law"

55. Defendant incorporates by reference each and every response to paragraphs one through 54 as if fully set forth herein.

56. Defendant avers that the allegations of this paragraph contain argument and legal conclusions that require no answer. To the extent any of the allegations in this paragraph purport to summarize or state the contents of any laws, cases, statutes, or regulations, which speak for themselves, Defendant denies any characterization of such material inconsistent with their content. Otherwise, Defendant lacks knowledge or information sufficient to form a belief as to



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the allegations made in this paragraph, and on that basis denies each and every averment contained therein.

57. Defendant avers that the allegations of this paragraph contain argument and legal conclusions that require no answer. To the extent any of the allegations in this paragraph purport to summarize or state the contents of any laws, cases, statutes, or regulations, which speak for themselves, Defendant denies any characterization of such material inconsistent with their content. Otherwise, Defendant lacks knowledge or information sufficient to form a belief as to the allegations made in this paragraph, and on that basis denies each and every averment contained therein.

58. Defendant avers that the allegations of this paragraph contain argument and legal conclusions that require no answer. To the extent any of the allegations in this paragraph purport to summarize or state the contents of any laws, cases, statutes, or regulations, which speak for themselves, Defendant denies any characterization of such material inconsistent with their content. To the extent this paragraph alleges Defendant committed any of the acts described in this paragraph, Defendant denies each and every averment contained therein.

59. Defendant denies each and every factual allegation contained in this paragraph.

60. Defendant avers that the allegations of this paragraph contain argument and legal conclusions that require no answer. To the extent any of the allegations in this paragraph purport to summarize or state the contents of any laws, cases, statutes, or regulations, which speak for themselves, Defendant denies any characterization of such material inconsistent with their content. To the extent this paragraph alleges Defendant committed any of the acts described in this paragraph, Defendant denies each and every averment contained therein.

61. Defendant denies each and every factual allegation contained in this paragraph.

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62. Defendant avers that the allegations of this paragraph contain argument and legal conclusions that require no answer. To the extent any of the allegations in this paragraph purport to summarize or state the contents of any laws, cases, statutes, or regulations, which speak for themselves, Defendant denies any characterization of such material inconsistent with their content. To the extent this paragraph alleges Defendant committed any of the acts described in this paragraph, Defendant denies each and every averment contained therein.

63. Defendant denies each and every factual allegation contained in this paragraph.

64. Defendant denies each and every factual allegation contained in this paragraph.

65. Defendant denies each and every factual allegation contained in this paragraph.

Answer to Averments Under "Count II: Violation of Missouri Merchandising Practices Act"

66. Defendant incorporates by reference each and every response to paragraphs one through 65 as if fully set forth herein.

67. Defendant avers that the allegations of this paragraph contain argument and legal conclusions that require no answer. To the extent any of the allegations in this paragraph purport to summarize or state the contents of any laws, cases, statutes, or regulations, which speak for themselves, Defendant denies any characterization of such material inconsistent with their content. To the extent this paragraph alleges Defendant committed any of the acts described in this paragraph, Defendant denies each and every averment contained therein.

68. Defendant avers that the allegations of this paragraph contain argument and legal conclusions that require no answer. To the extent any of the allegations in this paragraph purport to summarize or state the contents of any laws, cases, statutes, or regulations, which speak for themselves, Defendant denies any characterization of such material inconsistent with their

content. To the extent this paragraph alleges Defendant committed any of the acts described in this paragraph, Defendant denies each and every averment contained therein.

69. Defendant denies each and every factual allegation contained in this paragraph.

70. Defendant denies each and every factual allegation contained in this paragraph.

71. Defendant denies each and every factual allegation contained in this paragraph.

72. Defendant avers that the allegations of this paragraph contain argument and legal

conclusions that require no answer. Otherwise, Defendant lacks knowledge or information sufficient to form a belief as to the allegations made in this paragraph, and on that basis denies each and every averment contained therein.

73. Defendant denies each and every factual allegation contained in this paragraph.

Answer to Averments Under "Count III: Conversion"

74. Defendant incorporates by reference each and every response to paragraphs one through 73 as if fully set forth herein.

75. Defendant avers that the allegations of this paragraph contain argument and legal conclusions that require no answer. To the extent any of the allegations in this paragraph purport to summarize or state the contents of any laws, cases, statutes, or regulations, which speak for themselves, Defendant denies any characterization of such material inconsistent with their content. To the extent this paragraph alleges Defendant committed any of the acts described in this paragraph, Defendant denies each and every averment contained therein.

76. Defendant lacks knowledge or information sufficient to form a belief as to the allegations made in this paragraph, and on that basis denies each and every averment contained therein.

77. Defendant denies each and every factual allegation contained in this paragraph.

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78. Defendant denies each and every factual allegation contained in this paragraph.

79. Defendant denies each and every factual allegation contained in this paragraph.

80. Defendant denies each and every factual allegation contained in this paragraph.

Answer to Averments Under "Count IV: Common Law Trespass to Chattels"

81. Defendant incorporates by reference each and every response to paragraphs one through 80 as if fully set forth herein.

82. Defendant avers that the allegations of this paragraph contain argument and legal conclusions that require no answer. Defendant denies each and every factual allegation contained in this paragraph.

83. Defendant lacks knowledge or information sufficient to form a belief as to the allegations made in this paragraph, and on that basis denies each and every averment contained therein.

84. Defendant avers that the allegations of this paragraph contain argument and legal conclusions that require no answer. To the extent any of the allegations in this paragraph purport to summarize or state the contents of any laws, cases, statutes, or regulations, which speak for themselves, Defendant denies any characterization of such material inconsistent with their content. Otherwise, Defendant lacks knowledge or information sufficient to form a belief as to the allegations made in this paragraph, and on that basis denies each and every averment contained therein.

85. Defendant avers that the allegations of this paragraph contain argument and legal conclusions that require no answer. To the extent any of the allegations in this paragraph purport to summarize or state the contents of any laws, cases, statutes, or regulations, which speak for themselves, Defendant denies any characterization of such material inconsistent with their

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content. Otherwise, Defendant lacks knowledge or information sufficient to form a belief as to the allegations made in this paragraph, and on that basis denies each and every averment contained therein.

86. Defendant avers that the allegations of this paragraph contain argument and legal conclusions that require no answer. To the extent any of the allegations in this paragraph purport to summarize or state the contents of any laws, cases, statutes, or regulations, which speak for themselves, Defendant denies any characterization of such material inconsistent with their content. Otherwise, Defendant lacks knowledge or information sufficient to form a belief as to the allegations made in this paragraph, and on that basis denies each and every averment contained therein.

87. Defendant denies each and every factual allegation contained in this paragraph.

88. Defendant denies each and every factual allegation contained in this paragraph.

89. Defendant denies each and every factual allegation contained in this paragraph.

Answer to Averments Under "Count V: Invasion of Privacy by Unreasonable Intrusion"

90. Defendant incorporates by reference each and every response to paragraphs one through 89 as if fully set forth herein.

91. Defendant avers that the allegations of this paragraph contain argument and legal conclusions that require no answer. To the extent any of the allegations in this paragraph purport to summarize or state the contents of any laws, cases, statutes, or regulations, which speak for themselves, Defendant denies any characterization of such material inconsistent with their content. Defendant s denies each and every averment contained therein.

92. Defendant avers that the allegations of this paragraph contain argument and legal conclusions that require no answer. To the extent any of the allegations in this paragraph purport

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to summarize or state the contents of any laws, cases, statutes, or regulations, which speak for themselves, Defendant denies any characterization of such material inconsistent with their content. Otherwise, Defendant lacks knowledge or information sufficient to form a belief as to the allegations made in this paragraph, and on that basis denies each and every averment contained therein.

93. Defendant lacks knowledge or information sufficient to form a belief as to the allegations regarding Plaintiff's purposes in "connect[ing] to the Internet," and on that basis denies each and every such averment. Defendant denies each and every remaining averment contained therein.

94. Defendant denies each and every factual allegation contained in this paragraph.

95. Defendant denies each and every factual allegation contained in this paragraph.

Answer to Averments Under "Count VI: Unjust Enrichment"

96. Defendant incorporates by reference each and every response to paragraphs one through 95 as if fully set forth herein.

97. Defendant avers that the allegations of this paragraph contain argument and legal conclusions that require no answer. To the extent any of the allegations in this paragraph purport to summarize or state the contents of any laws, cases, statutes, or regulations, which speak for themselves, Defendant denies any characterization of such material inconsistent with their content. Otherwise, Defendant lacks knowledge or information sufficient to form a belief as to the allegations made in this paragraph, and on that basis denies each and every averment contained therein.

98. Defendant denies each and every factual allegation contained in this paragraph.

99. Defendant denies each and every factual allegation contained in this paragraph.



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100. Defendant denies each and every factual allegation contained in this paragraph.

101. Defendant avers that the allegations of this paragraph contain argument and legal conclusions that require no answer. Defendant denies each and every averment contained therein.

102. Defendant denies each and every factual allegation contained in this paragraph.

Answer to Averments Under "Punitive Damages"

103. Defendant admits and avers that Plaintiff disclaims any entitlement to punitive or exemplary damages.

DEFENDANT'S FURTHER AND SEPARATE DEFENSES

Defendant, without alleging or admitting that it carries the applicable burden of proof or persuasion concerning any of these matters, asserts the following further defenses to the complaint and the purported claims for relief contained therein.

First Further and Separate Defense  
(Failure to State a Claim)

1. Plaintiff fails to state a claim against Defendants upon which relief can be granted.

Second Further and Separate Defense  
(Lack of Constitutional Standing)

2. Plaintiff lacks constitutional standing to pursue any claim against Defendant.

Third Further and Separate Defense  
(Lack of Statutory Standing)

3. Plaintiff lacks statutory standing to pursue any claim against Defendant under the standing requirements of Missouri statutes, including but not limited to the Missouri Computer Tampering Statute and the Missouri Franchising Practices Act.

Fourth Further and Separate Defense  
(Compliance With Law)



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4. Plaintiff may not pursue a claim against Defendant because Defendant complies with any and all applicable statutes, regulations, and other laws.

Fifth Further and Separate Defense  
(Preemption)

5. Plaintiff may not pursue a claim against Defendant because federal law preempts Plaintiff's claims.

Sixth Further and Separate Defense  
(Lack of Causation)

6. Plaintiff may not pursue any claim against Defendant because Defendant did not cause any harm Plaintiffs allegedly suffered.

Seventh Further and Separate Defense  
(Lack of Injury)

7. Plaintiff may not pursue any claim against Defendant because Plaintiffs have not suffered any injury.

Eighth Further and Separate Defense  
(Consent and Authorization)

8. Plaintiff may not pursue any claim against Defendant because Plaintiff expressly or by her conduct approved, authorized, ratified, permitted, voluntarily agreed to, or consented to the conduct alleged in the complaint.

Ninth Further and Separate Defense  
(Failure to Mitigate Harm)

9. Plaintiff may not pursue any claim against Defendant because Plaintiff had a duty to, but did not, exercise reasonable efforts to mitigate harm.

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Tenth Further and Separate Defense  
(Waiver)

10. Plaintiff has waived any right to pursue or obtain the relief sought in the complaint.

Eleventh Further and Separate Defense  
(Estoppel)

11. Plaintiff is estopped by Plaintiff's own conduct from seeking or obtaining any of the relief sought in the complaint.

Twelfth Further and Separate Defense  
(Unclean Hands)

12. Plaintiff is barred by the doctrine of unclean hands from seeking or obtaining any of the relief sought in the complaint.

Thirteenth Further and Separate Defense  
(Injunctive Relief — Vague, Overbroad, and Unduly Subjective)

13. Plaintiff is not entitled to the injunctive relief she seeks because it is too vague, overly broad, and unduly subjective for enforcement by the Court.

Fourteenth Further and Separate Defense  
(Injunctive Relief — Conflict with Regulation and Legislation)

14. Plaintiff is not entitled to the injunctive relief she seeks because it conflicts with federal regulations and legislation.

Fifteenth Further and Separate Defense  
(Injunctive Relief — Adequacy of Legal Remedy)

15. Plaintiff is not entitled to the injunctive relief she seeks because Plaintiff had adequate remedies at law for the harm alleged in the complaint.

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Sixteenth Further and Separate Defense  
(Statutes of Limitations)

16. Plaintiff is barred from seeking any recovery by the applicable statutes of limitations.

Seventeenth Further and Separate Defense  
(Assumption of Risk)

17. Plaintiff knowingly, voluntarily, and unreasonably assumed the risk of the conduct, events, and matters alleged in each cause of action in the Complaint alleged against defendants, and any damage sustained by plaintiff was the proximate result of the risks so assumed.

Eighteenth Further and Separate Defense  
(Additional Affirmative Defenses)

18. Defendant reserves the right to assert any and all other defenses pending the outcome of further investigation and discovery in this action.

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DEFENDANT'S PRAYER FOR RELIEF

WHEREFORE, Defendant prays for judgment as follows:

1. That Plaintiff take nothing for any claim for relief averred in the complaint;
2. That judgment on the complaint, and each and every claim for relief therein, be entered in favor of Defendant and against Plaintiff;
3. That Defendant be awarded its attorneys' fees and costs incurred herein; and
4. For such other and further relief as the Court deems just and proper.

DATED: September 27, 2012

By: 

David F. McDowell (*pro hac vice*)  
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Los Angeles, CA 90013-1025  
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Attorneys for Defendant  
TARGET CORPORATION

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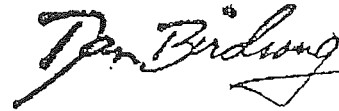
PROOF OF SERVICE

The undersigned certifies that a complete copy of this instrument was sent by facsimile transmission on this 27<sup>th</sup> day of September 2012, to the following attorneys of record herein at their registered fax numbers and the transmission has been confirmed by a send report:

Steve Gaunt  
341-8548

Scott Kamber  
212-202-6364

Stuart Cochran  
214-219-8838



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Dan L. Birdsong